

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CENTER FOR BIOLOGICAL DIVERSITY,))
OREGON NATURAL RESOURCES))
COUNCIL, PACIFIC RIVERS COUNCIL,))
and WATERWATCH,))

Plaintiffs,)

vs.)

UNITED STATES FISH AND WILD-))
LIFE SERVICE,))

Defendant.)

and)

BUILDING INDUSTRY ASSOCIATION))
OF WASHINGTON, WASHINGTON))
FARMS BUREAU, WASHINGTON))
CONTRACT LOGGERS ASSOCIATION,))
INC., WASHINGTON STATE DAIRY))
FEDERATION, and WASHINGTON))
CATTLEMEN'S ASSOCIATION,))

Defendant-Intervenors.)

Case No. 05-165-KI

OPINION AND ORDER

Patti Goldman
Stephen D. Mashuda
Earthjustice
705 Second Avenue, Suite 203
Seattle, Washington 98104

Stephanie Parent
Pacific Environmental Advocacy Center
10015 S. W. Terrilliger Boulevard
Portland, Oregon 97219

Attorneys for Plaintiff

Kelly A. Johnson
Acting Assistant Attorney General
Meredith L. Flax
U. S. Department of Justice
Environment & Natural Resources Division
Wildlife & Marine Resources Section
Ben Franklin Station, P.O. Box 7369
Washington, D. C. 20044-7369

Attorneys for Defendant

Ross Day
Oregonians in Action
P. O. Box 230637
Tigard, Oregon 97281

Russell C. Brooks
Pacific Legal Foundation
10940 N. E. 33rd Place, Suite 109
Bellevue, Washington 98004

Attorneys for Defendant-Intervenors

KING, Judge:

Defendant-intervenors seek \$148.48 in their Bill of Costs (#66). Plaintiffs raise several valid objections.

LEGAL STANDARDS

Fed. R. Civ. P. 54(d)(1) provides, in part: “Except when express provision therefor is made either in a statute of the United States or in these rules, costs other than attorneys’ fees shall be allowed as of course to the prevailing party unless the court otherwise directs” Expenses which may be taxed as costs against a losing party are enumerated in 28 U.S.C. § 1920:

A judge or clerk of any court of the United States may tax as costs the following:

- (1) Fees of the clerk and marshal;
- (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and copies of papers necessarily obtained for use in the case;
- (5) Docket fees under section 1923 of this title;
- (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

However, the discretion to grant costs does not include the authority to tax costs beyond those authorized by statute or contract. Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437, 445 (1987). Thus, the discretion granted under Rule 54(d) allows a court to decline to tax costs,

but does not authorize a court to award excess costs in the absence of a “specific congressional command.” Id. at 442.

DISCUSSION

Plaintiffs first object to the \$100 pro hac vice fee. I agree that this fee is not one of the enumerated costs under Section 1920 and do not award the amount. I interpret the “fees of the clerk” to be the fee required to file an action.

Plaintiffs next object to the copying costs. Plaintiffs calculate the total to be based on a rate of 16¢ per page and contend that this is unreasonably high. Although I do not quibble about the cost per page, I am unable to determine from the documentation filed in support of the Bill of Costs the copies for which defendant-intervenors seek reimbursement. The spreadsheet only identifies the copies as a dollar amount per month for five months plus an amount for copying a motion, memo and statement on July 26, 2005. Although the total amount is quite small, the documentation is not adequate for me to determine if the copies were necessarily obtained for use in the case. Consequently, I decline to award any copying costs.

CONCLUSION

Defendant-Intervenors’ Bill of Costs (#66) is denied in its entirety.

IT IS SO ORDERED.

Dated this 14th day of December, 2005.

/s/ Garr M. King
Garr M. King
United States District Judge